



**AN BILLE COMHARBAIS (LEASÚ), 2015
SUCCESSION (AMENDMENT) BILL 2015**

EXPLANATORY MEMORANDUM

Profiting from Crime

People kill for a variety of reasons, some for monetary gain or to force the division of assets and the realisation of property to release equity.

The assertion that a person should not be allowed to profit from his or her crime is a well-known tenet of criminal justice. It is a principle which ought to be more prominently reflected in our statute law, and honoured in common law.

It is possible to point to a number of instances in which the legislature allows for the authorities to intervene where a person has profited from a crime that they have committed — the work of the Criminal Assets Bureau being one prominent example.

However there are other instances where the inadequacy of the law has allowed offenders to retain the fruits of their crimes. One such case arises where one joint tenant unlawfully kills another with a view to seizing control of jointly owned property, ultimately realising financial gain from the proceeds of a subsequent sale.

The failure of the legislature to move to close off this weakness in the law gives rise to a grossly unjust and perverted incentive for a joint tenant with malicious intent to kill another joint tenant. That the law closes its eyes to this perversion of public policy is breathtaking.

Purpose of this Bill

The killing of a human being is the gravest crime in law. It is appropriate therefore that the provisions of succession law and property law should preclude an offender from reaping the fruits of a heinous crime and being unjustly enriched as a result.

The purpose of this Bill is to ensure that the renowned principle of criminal justice — i.e. that a person should not be allowed to profit from his or her crime — is enshrined in statute law as regards joint tenants.

The Bill seeks to achieve this by providing that where one joint tenant kills another, that offender shall have no entitlement to the victim's share in the property and there shall similarly be no entitlement on the part of the offender to avail of his or her own share in the property.

This is a just and fair solution which recognizes the public policy requirement that a joint tenant is not incentivised to kill another joint tenant; it is a solution which is necessary in order to give effect to the exigencies of the common good, and is on any objective assessment, proportionate to the objective to be achieved.

Property Rights

It is acknowledged that the Constitution affords a strong level of protection to property rights. However, such protections which are afforded under the constitution are not absolute. Individuals' property rights may be the subject of interference which is mandated by legislation provided such interference is — in the words of Article 43.2.2 of the Constitution — in the “exigencies of the common good”, and also is proportionate to the objective to be achieved.

The payment of compensation is often associated with efforts to mollify a situation where an interference with property rights might otherwise be deemed unconstitutional. However, there are of course situations in which a suggestion of the need for the payment of compensation would be wholly inappropriate.

The property rights provisions contained in the Irish Constitution are by no means unique. It is commonplace for constitutions of other jurisdictions to afford a strong level of protection to property rights. However, such constitutional protections afforded in respect of property rights do not stand as an obstacle to a legislative approach which dictates that a joint tenant who kills another joint tenant should be denied the right to the victim's share as well as being denied the right to benefit from the offender's own share.

Provisions of the Bill

The preamble to the Bill sets out in a concise way the constitutional and public policy environment in which the Bill is being introduced.

Section 1 of the Bill defines the term “Principal Act” which is used in the Bill.

Section 2 of the Bill inserts two new sections (section 120A and section 120B) into the Succession Act 1965.

As is stated in section 120A(1), section 120A would apply to a joint tenancy where there is only one surviving co-owner and that surviving co-owner has been found guilty of the murder, attempted murder, or manslaughter of the other co-owner. Section 120A(2) states that in the situation described in section 120A(1), the joint tenancy is terminated, as are any rights flowing from that tenancy. The section goes on to provide that where a joint tenancy has been terminated in this way, the entire interest in the property is vested in the estate of the victim.

Section 120B(1) explains that this particular section applies to a joint tenancy where there are two or more surviving co-owners and one of the surviving co-owners has been found guilty of the murder, attempted murder, or manslaughter of another co-owner. Section 120B(2) states that in the situation described in section 120B(1), the joint tenancy is modified so that both the victim's interest in the property, and the offender's interest in the property, are automatically vested in the estate of the victim. As is stated in section 120B(3) the other joint tenants remain unaffected and the joint tenancy continues to exist.

In both section 120A and section 120B, it is made clear that an offender will not be entitled to make an application to court for additional resources to be allocated to him or her.

Section 3 sets out the short title of the Act and as this Bill does not contain a commencement provision the Bill will come into effect once it has been signed by the President.

March, 2015.